

## **REMARKS**

Applicant respectfully requests consideration of the subject application as amended herein. This Amendment is submitted in response to the Office Action mailed March 9, 2006. Claims 1-6, 8, 10, 11, 24 and 33-36 are rejected. In this Amendment, Claims 24 and 35-37 are amended. Previously the addition of claims has a numbering mistake resulting in TWO claims 34. In this amendment, the affected claims have been amended to renumber them to be claims 35-37.

In this Amendment, claims 1-6, 8, 10, 11, 24, 33-37 are pending.

### **Rejections under 35 U.S.C. § 102(e)**

The Examiner has rejected claims 1, 5-6, 8, 24, 35 and 36 under 35 U.S.C. §102(e) as being anticipated by Duffy (USPN 6,048,332), hereinafter “Duffy”. Applicant respectfully disagrees.

Duffy disclosed a drug delivery catheter having a balloon with concavities in the balloon wall with apertures through which fluid exits the balloon. Duffy discussed the use of the balloon catheter system with pores to deliver a therapeutic agent to the vessel. Duffy did not teach a method of structurally enlarging a bypass vessel as in Applicant’s claimed invention. Applicant’s claimed invention pertains specifically to a method of enlarging a bypass vessel. As recited, the method includes “injuring a vessel region” and “delivering an arteriogenic factor to the bypass vessel in a medically effective manner to structurally enlarge an existing blood vessel.” Although Duffy disclosed a catheter balloon system capable of delivering a therapeutic agent to a blood vessel, Duffy did not disclose such elements of the presently claimed invention. There is simply no teaching in Duffy to injure the vessel and then deliver an arteriogenic factor to induce enlargement of the vessel. Duffy only taught a

delivery method to deliver a therapeutic agent to a blood vessel. That simply cannot be construed to say that Duffy anticipated or disclosed each and every element of claims 1 and 24 (reproduced below).

1. A method comprising:  
injuring a vessel region, said vessel region comprising a bypass vessel adjacent to a primary vessel leading to a target area for blood flow, said primary vessel having an occlusion to blood flow; and  
delivering an arteriogenic factor to said bypass vessel in a medically effective manner to structurally enlarge an existing blood vessel.
24. A method of structurally enlarging a bypass vessel adjacent to a primary vessel, said method comprising:  
injuring said bypass vessel; and  
advancing a distal portion of a catheter to said bypass vessel; and  
delivering an arteriogenic factor in a medically effective manner to said bypass vessel via said catheter; and  
causing an enlargement to the bypass vessel.

Duffy discussed “this method can be combined with techniques intended to dilate stenotic regions of a body lumen, or can be combined with other techniques to treat localized lesions of a body lumen” or with methods “for treating stenotic regions of body lumens such as the endoluminal excision of a lesion producing a stenosis fall within the scope of the term dilatation as used herein.” And Duffy discussed, the agents can be various types of therapeutic agents such as antineoplastic agents, chemotherapeutic agents, anti-angiogenic agents, etc. But, nowhere in Duffy was there a teaching, suggestion, or even motivation of the combination of the elements of methods as recited in claims 1 and 24.

Claims 2-11 depend from claim 1. Claims 33-37 depend from claim 24. These claims are thus similarly not anticipated by Duffy for the same reasons discussed above.

For at least the reasons above, Applicant respectfully submits that the pending claims 1, 5-6, 8, 24, 35 and 36 are patentable over Duffy.

Accordingly, Applicant earnestly requests that the subject rejections be withdrawn.

**Rejections under 35 U.S.C. § 103(a)**

Claims 2, 3, and 33- are rejected under 35 U.S.C. §103(a) as being unpatentable over Duffy. As discussed below, Applicant respectfully submits that the pending claims 2, 3 and 33 are patentable over Duffy.

Similar to Applicant's discussion above, Duffy did not disclose or even suggest the combination of the elements as recited in claims 1 and 24. Therefore, it would have not been obvious from the teaching of Duffy to provide suggestion, motivation, or teaching of the elements of claims 2, 3 and 33. Accordingly, Applicant respectfully requests that the subject rejections be withdrawn.

**35 U.S.C. § 112, second paragraph**

Claims 34-36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Applicant has amended claims 34-36 and respectfully submits that the amended claims comply with § 112, second paragraph, and therefore request withdrawal of this rejection.

### CONCLUSION

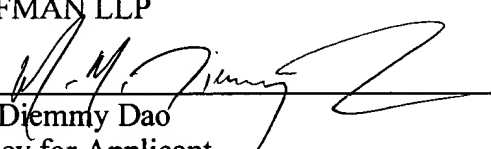
Applicant respectfully submits that in view of the amendments and arguments set forth herein, the rejections herein have been overcome. Accordingly, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Mimi Dao at (408) 720-8300.

Pursuant to 37 C.F.R. 1.136(a)(3), applicant hereby requests and authorizes the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. 1.16 and 1.17, to Deposit Account No. 02-2666.

Respectfully submitted,

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